

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:01-cr-00004-04

NATHAN L. SMITH,

Defendant.

**MEMORANDUM OPINION AND JUDGMENT ORDER**

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Standard consideration.

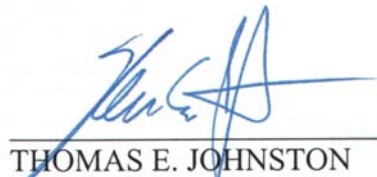
The Court has received and considered the addendum to the PSI from the Probation Office, and received any materials submitted by the parties on this issue.

The Defendant was sentenced as a career offender. For this reason, his sentencing range is unchanged as a result of the November 1, 2007, Sentencing Guidelines amendment and he is, therefore, not eligible for a reduction of his sentence. In their respective written responses, both the

United States and the Defendant acknowledge that the Defendant is not eligible for a sentence reduction. For these reasons, the § 3582 Motion is **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshals.

ENTER: March 6, 2009



---

THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE